HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 195(M/B) 2004

Naushe Khan S/o Abdul Karim Khan,
R/o Alipur Chaupla Gajraula,
Distt. J.P. Nagar, (U.P.). … Petitioner.

Vs.

State of Uttaranchal through
Its Secretary Road Transport,
Dehradun, Uttaranchal and three others. … Respondents.

Dated: March 5, 2004:

Hon'ble M.M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

Heard Sri. Gopal K. Verma, Ad. for the petitioner, Learned Standing Counsel for the respondent no. 1 and Sri Ashish Joshi, Ad. for respondent nos. 2 to 4.

By means of this writ petition the petitioner has prayer for the issue of a writ, order or direction in the nature of mandamus commanding the respondent nos. 1 & 2 to continue with the terms and conditions of the agreement dated 21.07.2000 signed by the erstwhile State of U.P., the respondents nos. 3&4 till 20.07.2005.

Brief facts giving rise to the present writ petition are that the petitioner is the owner of a restaurant, namely Mela restaurant, situated at Delhi-Moradabad Highway at Gajraula, Distt. J.P. Nagar, U.P. On 15.07.2000, the respondent no. 4 took a decision to authorise the petitioner's restaurant to serve the passengers who used to travel by the buses of respondent no. 3 & 4. As per terms and condition of the contract the buses of the respondent will stop at restaurant of the petitioner and for each bus, the petitioner shall pay Rs. 10/- to the conductor of the bus and provide facilities to the bus staff and provide cheaper food to the passengers of the bus.

Counsel for the petitioner has submitted that on 21.07.2000 the petitioner and the respondent no. 3 on behalf of respondent no. 4 signed the contract and as per the terms and conditions the petitioner

is providing regularly all facilities to the bus staff as well as of the passengers of the buses of the respondents.

The grievance of the petitioner is that when the Ministry of Transport & Highways has issued a notification no. S.O. 1233 (F) dated 27.10.2003 for creation of Uttaranchal State Road Transport Corporation; the staff of the buses of the respondent corporation has started purposely neglecting to stop the buses at the proposed venue i.e. the restaurant of the petitioner, which is in gross violation of the terms and conditions of the agreement signed by the parties.

Petitioner has prayed that a direction be issued to respondent no. 2 to issue directions to their drivers to stop the buses at the restaurant as per the terms and conditions of the agreement dated 21.07.2000 signed between the State of U.P. and the petitioner and to continue till the 5 years over.

Counsel for the petitioner has referred the agreement dated 21st July 2000 entered between the Regional Manager, U.P. State Road Transport Corporation, called as the first party and Naushe Khan S/o Abdul Karim Khan, R/o Allipur, Chaupla, Gajraula, District Jyotibafule Nagar called as the second party. The terms and conditions which are relevant are quoted below:-

"प्रथम पक्ष की प्रतिदिन रूकने वाली बसों का एक रजिस्टर भी रखा जायेगा, जिस पर प्रतिदिन चालक/परिचालक के हस्ताक्षर द्वितीय पक्ष करायेगा।

द्वितीय पक्ष को रोकने वाली प्रत्येक बस के परिचालक को निर्धारित धनराशि रूपये 10/– प्रति बस ठहराव देनी होगी, जिसकी रसीद परिचालक भार पुस्तिका से उपलब्ध करायेंगे तथा जिसकी मूल प्रति पर द्वितीय पक्ष को हस्ताक्षर करना होगा

द्वितीय पक्ष ढाबे में प्रथम पक्ष के बस के चालक/परिचालक को निःशुल्क भोजन/जलपान उपलब्ध करायेगा तथा चालक/परिचालक यदि उक्त ढाबे से पी0सी0ओ0/फैक्स का प्रयोग अपने कार्य हेतु करते हैं तो इस सुविधा को भी निःशुल्क उपलब्ध कराया जायेगा, यह टेलीफोन बस के चालक/परिचालक बस स्टेश्न/निगम के भिन्न नम्बरों पर कर सकता है। जिसकी एक सूची प्रत्येक ढाबे मालिक को उपलब्ध करायी जायेगी।

द्वितीय पक्ष द्वारा किये गये अनुबंध की एक प्रति ढाबे पर प्रदर्शित करेगा, निरीक्षण अधिकारियों को उपलब्ध रहे।

अनुबंध में प्रयुक्त किसी शब्द अभिव्यक्ति शर्तों या उपबंध के अर्थ निर्वचन या अर्धान्वयन के सम्बन्ध में किसी पक्ष के अधिकारों या दायित्यों के संबंध में या अन्य किसी प्रकार के मामले में कोई विवाद संषय या मतभेद उत्पन्न होने पर, उ0प्र0 राज्य सड़क

परिवहन निगम के प्रबन्ध निदेशक या उसके द्वारा नामित उ0प्र0 राज्य परिवहन निगम के किसी अधिकारी को एकमात्र मध्यस्थ हेतु ऐसा विषय संदर्भित किया जायेगा और ऐसे मध्यस्थ का निर्णय/अधिनिर्णय पत्रकारों के बीच अंतिम, निर्णायक एवं बाध्यकारी होगा। ऐसे सभी संदभों में आरविकट्रेशन एक्ट 1946 के प्राविधान एवं उसके अंतर्गत निर्मित नियम निस्तारण हेतु लागू होंगें।"

As well appear from paragraph 22 of the agreement that since there is an arbitrator clause, the petitioner is at liberty to approach the Arbitrator.

Since alternative remedy is already available to the petitioner in the agreement dated 21st July 2000, no interference can be made under Article 226 of the Constitution of India.

However, liberty is given to the petitioner to approach the authority concerned as mentioned in the notification dated 27th October 2003 issued by the Ministry of Transport and Highways for availing of the alternative remedy.

Accordingly, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.

(Rajesh Tandon J.) **(M.M. Ghildiyal J.)**

March 5,2004:
NCM: